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***Via Certified Mail –
Return Receipt Requested***

July 30, 2018

Yasmin Beers, City Manager
Members of the City Council
City of Glendale
Management Services, Room 200
613 E. Broadway
Glendale, CA 91206-4391

Roubik Golanian, P.E.
Head of Agency
Director of Public Works
City of Glendale
633 E. Broadway, Room 209
Glendale, CA 91206-4391

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Ms. Beers, Mr. Golanian, Head of Agency, and Members of the City Council:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring through the ownership and operation of the City of Glendale's sewage collection system.

River Watch hereby places the City of Glendale ("the City") on notice that following the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation pursuant to CWA § 301(a), 33 U.S.C. § 1311(a), and the Regional Water Quality Control Board, Los Angeles Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged unlawful discharges of sewage from the City's sewer pipelines to Verdugo Wash, the Los Angeles River, and the Pacific Ocean - all waters of the United States.

The CWA regulates the discharge of pollutants. The statute is structured in such a way that all discharges of pollutants are prohibited with the exception of enumerated statutory provisions. One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a National Pollutant Discharge Elimination System (“NPDES”) permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a), prohibition, such that a violation of a permit limit places a discharger in violation of the CWA. River Watch alleges the City violates the CWA by discharging pollutants from a point source to a water of the United States without complying with CWA §§ 301(a) and 505(a)(1)(A), 33 U.S.C. §§ 1311(a) 1365(a)(1)(A).

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency (“EPA”) to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board (“SWRCB”) and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City’s operations of its sewage collection system in the region at issue in this Notice is the Regional Water Quality Control Board, Los Angeles Region (“RWQCB”).

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute’s permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* CWA § 505, 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with the CWA.

NOTICE REQUIREMENTS

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation, or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specified Standard, Limitation, or Order Alleged to Have Been Violated

River Watch has identified discharges of sewage from the City’s sewage collection system to waters of the United States in violation of CWA § 301(a), 33 U.S.C. § 1311(a), which states in part: “Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act [33 U.S.C. §§ 1312, 1316, 1317, 1328, 1342, 1344], the discharge of any pollutant by any person shall be unlawful.” These discharges are also in violation of the *Los Angeles County Municipal Separate Storm Sewer System (MS4) Permit* (“MS4”), NPDES Permit No. CAS004001, governing the municipal discharges of storm water and non-storm water by the Los Angeles County Flood Control District, the County of Los Angeles, and 84 incorporated cities (including the City) within the coastal watersheds of Los Angeles County.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from July 30, 2013, to July 30, 2018, the City has violated the Act as described in this Notice. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

A. Sanitary Sewer Overflows, Inadequate Reporting, and Failure to Mitigate Impacts

I. Sanitary Sewer Overflows

Sanitary Sewer Overflows (“SSOs”), in which untreated sewage is discharged above ground from the sewage collection system prior to reaching the Los Angeles-Glendale Water Reclamation Plant’s Hyperion Treatment Plant, are alleged to have occurred both on the dates reported by the City and identified in the California Integrated Water Quality System (“CIWQS”) Interactive Public SSO Reports, and on dates when no reports were filed by the City, all in violation of the CWA. A review of the CIWQS “Spill Public Report – Summary Page” identifies **220** “Total Number of SSO locations,” with **253,238** gallons total volume of SSOs. Of this total volume, the City admits at least **99,784** gallons, or **39%** of the total, reached a surface water. The cause of these SSOs is clear.

The City’s aging sewage collection system has historically experienced high Inflow and Infiltration (“I/I”) during wet weather. Structural defects which allow I/I into the sewer lines result in a buildup of pressure which causes SSOs. Overflows caused by blockages and I/I result in the discharge of raw sewage into gutters, canals, and storm drains which are connected to adjacent surface waters including Verdugo Wash, the Los Angeles River, and the Pacific Ocean.

Examples of the alleged violations included in the list of CIWQS-reported SSOs are:

- October 22, 2017 (Event ID# 841077), a spill of 2,900 gallons, caused by root intrusion, occurred at 1935 Alpha Road. The total volume of the spill was 2,900 gallons. Of this amount, 300 gallons were recovered and 2,600 gallons reached the Los Angeles River via the Verdugo Wash.
- December 13, 2016 (Event ID# 830769), a sewage spill caused by debris-rags occurred at 3436 N. Verdugo Road. The spill volume was estimated at 12,051 gallons. Of this amount, 7,268 gallons were recovered and 4,783 gallons reached the Los Angeles River via Verdugo Wash.
- August 28, 2013 (Event ID# 798423), a sewage spill caused by Grease Deposition, non-dispersible items, and some roots in a force main occurred at 1606 Rockglen Avenue. The estimated spill volume was 3,900 gallons. Of this amount, 723 gallons were reported as recovered and an estimated 3,177 gallons reached the Los Angeles River.

II. Inadequate Reporting of Discharges

a. Incomplete and Inaccurate SSO Reporting

Full and complete reporting of SSOs is essential to gauging their impact upon public health and the environment. The City's SSO Reports, which should reveal critical details about each of these SSOs, lack responses to specific questions that would present sufficient information to accurately assess and ensure these violations would not recur.

In addition, River Watch's expert believes many of the SSOs reported by the City as not reaching surface waters did in fact reach surface waters, and those reported as reaching surface waters did so in greater volume than stated. A careful reading of the time when the SSO began, the time the City received notification of the SSO, the time of its response, and the time at which the SSO ended, appear as unlikely estimations.

Examples of the alleged violations included in the list of CIWQS-reported SSOs are:

- November 07, 2016 (Event ID #829740) – both the spill start time and the agency notification time are reported as 7:35 am, and the estimated operator arrival time and estimated spill end time are reported as 8:04 am. The estimated total volume of spill is 290 gallons, of which 55 gallons are reported as being recovered, while 290 gallons (the same amount as total volume) are reported as having reached an “un-named tributary to Verdugo Wash.”
- February 25, 2017 (Event ID #833419) – both the spill start time and the agency notification time are reported as simultaneously occurring at 8:51 am, the operator arrival time is reported as 9:11 am and the estimated spill end time is reported as 9:20 am. The estimated total volume of spill is 1,450 gallons, of which 1,450 are reported as being recovered, while 1,450 gallons are reported as, “NA- No sewage reached the waters of the state.”¹
- January 01, 2019 (Event ID #821144) – both the spill start time and agency notification time are reported as occurring at 10:00 am. The operator arrival time is reported as 10:49 am and spill end time is reported as 11:12 am. The reported estimated total volume of the spill is estimated at 1,080 gallons, 213 gallons of which are reported as having been recovered, while 213 gallons are also reported as also reaching land. Out of the total estimated volume, 867 gallons are reported as having reached the Los Angeles River via Verdugo Wash.

Given the unlikely accuracy of the times and intervals provided in these reports, it is difficult to consider the stated volumes as accurate. Many of the City's SSO reports list the spill start and agency notification times as exactly the same time. Without correctly reporting the spill

¹ Item “16 – Explanation of final spill destination” reports, “Spill was trapped behind check-gates at point where receiving storm drain *enters* the Verdugo Wash and upstream of the main channel which carries seasonal flows and *was* running at the time of this event.” Given the close proximity of the spill, the spill may have actually affected Verdugo Wash.

start and end time, there is a danger that the duration of the spill and volume of the spill will be underestimated.

b. Failure to Warn

Although the City posts warning signs for some of its SSOs reaching surface waters, River Watch contends the City is underestimating the significance of the impacts of its CWA violations by failing to post health warning signs for all SSOs which pose an imminent and substantial endangerment to public health or the environment regardless of location.

III. Failure to Mitigate Impacts

River Watch contends the City fails to adequately mitigate the impacts of SSOs. The City is a permittee under the *Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements* Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of an SSO including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the spill, cleanup of debris at the site, and modification of the sewage collection system to prevent further SSOs at the site. One of the most important remedial measures is the performance of adequate sampling to determine the nature and impact of the release. A review of CIWQS data reveals that no sampling was conducted for the SSO violations at issue in this Notice and reported as having reached a surface water.

The EPA's "*Report to Congress on the Impacts and Control of CSOs and SSOs*" (EPA, Office of Water (2004)) identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous biological habitat areas exist within areas of the City's SSOs. Verdugo Wash and the Los Angeles River support a vast array of life including endangered and threatened species. Both watersheds are critical habitat for the threatened American White Pelican, the Red-Tailed Hawk, and the Snowy Egret to name a few. River Watch finds no record of the City performing any analysis of the impact of SSOs on habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

IV. Failure to Comply with the Municipal Separate Storm Sewer System (MS4) Stormwater Permit.

The City's MS4 is a system of conveyances intended to carry stormwater. It is connected to storm drain pipes which discharge into neighboring surface waters. However, SSOs bring sewage into the MS4 and in turn into waterways connected to, and downstream of, the MS4. River Watch contends the City fails to adequately comply with the discharge prohibitions of its MS4 Permit, which states in relevant part:

- "Each Permittee shall, for the portion of the MS4 for which it is an owner or operator, prohibit non-storm water discharges through the MS4 to receiving waters [with specific

exceptions]” (see Section III.A. “*Discharge Prohibitions*”).

- “Discharges from the MS4 that cause or contribute to the violation of receiving water limitations are prohibited”; and “Discharges from the MS4 of storm water, or non-storm water, for which a Permittee is responsible, shall not cause or contribute to a condition of nuisance” (see Section V.A.1. and 2. “*Receiving Water Limitations*”).

All SSOs which reach a storm drain or storm drain conveyance are violations of CWA § 301(a), 33 U.S.C. § 1311(a), as they are discharges of a pollutant (sewage) from a point source (sewage collection system) to a water of the United States without complying with any other sections of the Act. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future. In addition, all of these discharges pose both a nuisance pursuant to California Water Code § 13050(m), and an imminent and substantial endangerment to health and the environment.

B. Sewer Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well-established fact that exfiltration caused by pipeline cracks and other structural defects in a sewage collection system results in discharges to adjacent surface waters via underground hydrological connections.

River Watch contends that untreated sewage is discharged from cracks, displaced joints, eroded segments, etc., in the City’s sewage collection system either directly or via hydrologically connected groundwater to surface waters including Verdugo Wash, the Los Angeles River, and the Pacific Ocean. Due to these SSOs, surface waters become contaminated with pollutants including human pathogens. Chronic failures in the sewage collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of the adjacent waters with untreated sewage. Evidence of exfiltration can also be supported by reviewing mass balance data, I/I data, and video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens and other human markers such as caffeine. Any exfiltration found is a violation of the CWA. During the course of discovery, River Watch will test surface waters adjacent to sections of the City’s sewage collection system to determine the location and extent of exfiltration.

C. Impacts to Beneficial Uses

Verdugo Wash, the Los Angeles River, and the Pacific Ocean have many beneficial uses as defined in the RWQCB’s Basin Plan. SSOs reaching these waters or their tributaries cause prohibited pollution by unreasonably affecting these beneficial uses.

Verdugo Wash, approximately 9.4 miles long, begins south of Interstate 210 in Crescenta Valley, makes its way southeast along the eastern edge of the Verdugo Mountains, flows south through the San Rafael Hills, and finally connects to the Los Angeles River.

The Los Angeles River ("the River"), stretches approximately 51 miles from Canoga Park in the western end of San Fernando Valley to Long Beach. Two channelized streams - Bell Creek and Arroyo Calabazas - come together in the Canoga Park section of Los Angeles at the head of the River which flows east past the City and curves around Griffith Park before flowing south to the Pacific Ocean at Long Beach. The Los Angeles River watershed includes 3 regionally significant ecological areas: the Santa Monica Mountains, Verdugo Mountains and Griffith Park. It is one of largest watersheds in the region at 824 square miles.

The River was channelized by the Army Corps of Engineers beginning in 1938 after several devastating floods providing flood control for a growing Los Angeles and a consistent path for the river-course. Fed primarily by rainwater, snowmelt and urban discharge, the River is one of the few perennial rivers in Southern California. The concrete channel helps limit absorption of water into the earth providing flow every month since recording began in 1929. Although no native species of fish survived the channelization of the River, the River is home to many fish species including common carp, largemouth bass, tilapia, Amazon Sailfin and channel catfish, fathead minnow and crayfish.

The aquatic environment of the Los Angeles River has numerous beneficial uses identified in the RWQCB Basin Plan, including ground water recharge, water contact recreation, warm freshwater habitat, wildlife habitat, wetland habitat, marine habitat, and rare, threatened, or endangered species.

Many migratory birds, and those living on the River survive on the resources it provides. Bird species of special concern include the American White Pelican, Double Crested Cormorant, Osprey, Red-Tailed Hawk, Northern Harrier, Sharp-shinned Hawk, American Coot, Snowy and Great egret, Merlin, Great Blue Heron, California Gull, Vaux's Swift, Loggerhead Shrike, Yellow Warble, Yellow-Breasted Chat, Tri-colored Blackbird, and the Mallard. More rarely seen species include the Least Bittern, White-faced Ibis, Golden Eagle, Prairie Falcon, Long-billed Curlew, Burrowing Owl, Vermillion Flycatcher, California Horned Lark, and Summer Tanager. Riparian habitat is impaired by degraded water quality such as increases in water temperatures, the quantities of sediment and nutrients, pesticides, and heavy metals. The introduction of human waste via spills, exfiltration, storm drains, and SSOs, negatively effects countless species including the millions of people who swim in waters downstream of the City's sewage collection system.

River Watch is extremely concerned regarding the effects of surface, underground, and unreported SSOs on critical habitat in and around the diverse and sensitive ecosystems of Verdugo Wash and the Los Angeles River, including risks to the health of those who recreate in, and consume fish from, those ecosystems.

3. The Person or Persons Responsible for the Alleged Violation

The entity responsible for the alleged violations identified in this Notice is the City of Glendale as well as those of its employees responsible for compliance with the CWA and any applicable state and federal regulations and permits.

4. The Location of the Alleged Violation

The location or locations of the various violations alleged in this Notice are identified in records created and/or maintained by or for the City which relate to its sewage collection system as further described in this Notice.

The City, with a population of 200,000+, is located northeast of downtown Los Angeles at the southeastern end of San Fernando Valley. A 2016 census estimated the population at 200,826. The City and Los Angeles co-own the Los Angeles-Glendale Water Reclamation Plant ("the Plant"), operated and maintained by the Los Angeles Department of Sanitation pursuant to a Joint Powers Agreement between the two cities. The Plant, a tertiary wastewater treatment plant is located at 4600 Colorado Boulevard in Los Angeles. The Plant currently receives wastewater from the City, Burbank, Los Angeles, La Cañada Flintridge, and the Los Angeles Zoo. The wastewater is a mixture of domestic and industrial wastewater. The Plant has a design capacity of 20 million gallons per day and serves an estimated population of 434,000. Each of the cities pays 50% of the costs and receives an equal share of the recycled water after the wastewater is treated.

5. The Date or Dates of Violations or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is July 30, 2013 through July 30, 2018. This Notice also includes all violations of the CWA by the City which occur during and after this Notice period, up to and including the time of trial.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving notice is California River Watch, referred to throughout this notice as "River Watch," an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation duly organized under the laws of the State of California. Its headquarters and main office are located in Sebastopol. Its mailing address is 290 South Main Street, #817, Sebastopol, CA 95472. River Watch is dedicated to protecting, enhancing, and helping to restore the surface waters and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to the counsel as follows:

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RECOMMENDED REMEDIAL MEASURES

River Watch looks forward to meeting with the City's staff to tailor remedial measures to the specific operation of the City's sewage collection system. In advance of that conversation, River Watch identifies the following issues for discussion that will advance compliance with the CWA and the Basin Plan, and help economize the time and effort the parties need to resolve their concerns:

1. Determining the specific sewage collection system repairs required, and establishing deadlines for compliance;
2. Requiring implementation of an effective SSO reporting and response program;
3. Providing a lateral inspection and repair program;
4. Ensuring applications of chemical root control comply with the federal EPA or the RWQCB as well as the manufacturer and Cal-OSHA requirements;
5. Keeping the Sewer System Management Plan ("SSMP") up to date and properly certified;
6. Promoting staff training and education.

CONCLUSION

The violations set forth in this Notice affect the health and enjoyment of members of River Watch who reside and recreate in the effected community. Members of River Watch use and intend to use the affected watershed for recreation, fishing, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person," including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$53,484.00 per day/per violation for violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the City to contact counsel for River Watch within **twenty (20)** days of receipt of this Notice to initiate a discussion regarding the allegations detailed herein. In the absence of productive discussions to resolve this dispute, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lh

Service List

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✓ Regional Administrator
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